



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA ELECTRONIC AND FIRST CLASS MAIL

David E. Frulla, Esq.
Kelley Drye & Warren LLP
Washington Harbour, Suite 400
3050 K Street, NW
Washington, DC 20007
DFrulla@KelleyDrye.com

MAY 30 2017

RE: MUR 7247
(formerly Pre-MUR 595)

Dear Mr. Frulla:

On July 21, 2016, your clients Bell Nursery Holdings, LLC; its wholly-owned subsidiary, Bell Nursery USA, LLC; and Mr. Gary L. Mangum, their President and CEO, filed a *sua sponte* submission notifying the Federal Election Commission ("Commission") that they may have violated certain provisions of the Federal Election Campaign Act of 1971, as amended ("Act").

Upon review of the available information, the Commission, on May 9, 2017, opened a matter under review as to Bell Nursery USA, LLC and Gary L. Mangum, found reason to believe that Bell Nursery USA, LLC violated 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b)(1)(i), and found reason to believe that Gary L. Mangum violated 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b)(1)(ii), (iii). The Commission declined to open a matter under review as to Bell Holdings USA, LLC. The Factual and Legal Analysis, which provides the basis for the Commission's findings, is enclosed for your information.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel ("OGC") to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your clients violated the law.

1-04444420-1

If your clients are interested in engaging in pre-probable cause conciliation, please contact Tony Buckley, the attorney assigned to this matter, at (202) 694-1650 or tbuckley@fec.gov, within seven days of receiving this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials within 15 days of receiving this letter. Where appropriate, statements should be submitted under oath. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, it may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if your clients are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding. Pre-probable cause conciliation and other enforcement procedures are detailed in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at http://www.fec.gov/em/respondent_guide.pdf.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

Please be advised that although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

David E. Frulla, Esq.
MUR 7247
Page 3 of 3

This matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you have any questions, please contact Tony Buckley, the attorney assigned to this matter, at (202) 694-1650 or tbuckley@fec.gov.

On behalf of the Commission,



Steven T. Walther
Chairman

Enclosures
Factual and Legal Analysis

1704444407

1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5 **MUR: 7247**

6
7 **RESPONDENTS:** Bell Nursery USA, LLC
8 Gary L. Mangum
9

10
11 **I. INTRODUCTION**

12 This matter was generated by a joint *sua sponte* submission by Bell Nursery Holdings,
13 LLC ; Bell Nursery USA, LLC ("Bell Nursery"); and Gary L. Mangum, Bell Nursery's President
14 and Chief Executive Officer ("Mangum"), dated July 21, 2016 ("Submission"), and
15 supplemental submissions dated October 11, and November 14, 2016. The Submission notified
16 the Commission that Bell Nursery reimbursed Mangum for eight federal political contributions
17 totaling \$17,857 that were made in 2015 and 2016 via Mangum's personal credit card. The
18 reimbursements occurred when Bell Nursery reimbursed a number of other business expenses,
19 along with the contributions, that Mangum paid for with his personal credit card. Respondents
20 state that the reimbursements happened due to "insufficient attention to distinguishing between
21 Mr. Mangum's business and personal civic activities."¹

22 **II. FACTUAL AND LEGAL ANALYSIS**

23 **A. Background**

24 Bell Nursery Holdings, LLC is treated as a partnership by the Internal Revenue Service
25 and acts as a holding company.² Bell Nursery is its wholly owned subsidiary, which for tax

1 Submission at 2.

2 Submission at 1.

1 purposes, is treated as a disregarded entity of Bell Nursery Holdings, LLC.³ Mangum is Bell
2 Nursery's President, Chief Executive Officer, and part owner.⁴ Since 2004, Mangum has made
3 federal contributions totaling \$71,657, of which \$35,357 were made during 2015 and 2016.

4 In the spring of 2016, Bell Nursery and Mangum hired a law firm to assess their
5 compliance with Maryland's campaign finance law contribution limits, and later expanded that
6 review to include federal contributions.⁵ This review revealed that Bell Nursery had reimbursed
7 Mangum for eight federal contributions totaling \$17,857 that were charged to his personal credit
8 cards in 2015 and 2016.⁶ The review did not find that Bell Nursery had reimbursed any of
9 Mangum's contributions prior to 2015.⁷ Specifically, the following 2015 and 2016
10 contributions, all made by credit card, were reimbursed:

Date	Amount	Recipient	Year	Election
1/20/2015	\$2,600	Georgians for Isakson	2016	General
1/20/2015	\$2,600	Georgians for Isakson	2016	Primary
4/20/2015	\$1,000	Andy Harris for Congress	2016	Primary
5/1/2015	\$5,000	Leadership Matters for America PAC	2015	NA
7/29/2015	\$1,000	Barve for Congress	2016	Primary
8/25/2015	\$257	Barve for Congress	2016	Primary
8/28/2015	\$2,700	Chris Christie for President, Inc.	2016	Primary
2/4/2016	\$2,700	America Leads	2016	NA

12 Total: \$17,857

³ *Id.* "A disregarded entity refers to a business entity with one owner that is not recognized for tax purposes as an entity separate from its owner." <http://pntax.com/faq-what-is-a-disregarded-entity/>. (Last accessed Jan. 11, 2017). Accordingly, Bell Nursery is essentially a partnership for tax purposes.

⁴ *Id.*

⁵ Submission at 2.

⁶ *Id.*

⁷ Commission records show that Mangum made eight federal contributions from the 2004 through the 2014 election cycles. Maryland state records show that Mangum made 40 contributions in connection with Maryland state elections from the 2010 through the 2014 election cycles, and 18 in the 2016 election cycle. Bell Nursery and Bell Nursery Holdings, LLC made a combined total of 12 contributions in connection with Maryland state elections in the 2010, 2014, and 2016 election cycles.

1 During this same election cycle, Mangum also made \$18,700 in contributions that were not
2 reimbursed.⁸

3 Respondents state they cannot explain why some of Mangum's contributions were
4 reimbursed as business expenses and others were not. According to Respondents, Mangum and
5 his personal assistant would review Mangum's credit card accounts separately, making notes on
6 the statements.⁹ When this initial process was complete, the personal assistant would send the
7 draft expense report to a second Bell Nursery employee, an administrative assistant, to assign
8 general ledger codes, tabulate the various categories' expense report entries, and complete the
9 report for submission.

10 Respondents provided a few sample documents from the review, including credit card
11 statements that had been marked and lists of charges submitted for reimbursement with assigned
12 general ledger codes. The copies of credit card statements showed three federal contributions:
13 the two January 20, 2015, contributions to Georgians for Isakson, and the April 20, 2015,
14 contribution to Andy Harris for Congress. While the full names of the recipient committees do
15 not appear on the statements, there is sufficient information, either in the credit card company's
16 description of the item or in the accompanying notes to identify the charges as political

⁸ The following contributions, made by Mr. Mangum during the 2016 election cycle were not reimbursed:

11/11/2015	\$2,700	Portman for Senate Committee	2016	Primary
11/11/2015	\$2,700	Portman for Senate Committee	2016	General
2/17/2016	\$1,000	Kathy for Maryland	2016	Primary
3/9/2016	\$2,500	Plaster for Congress	2016	Primary
4/4/2016	\$1,700	Kathy for Maryland	2016	Primary
4/29/2016	\$2,700	Kathy for Maryland	2016	General
8/8/2016	\$2,700	Plaster for Congress	2016	General
8/15/2016	\$2,700	Amie Hoeber for Congress	2016	General

Total: \$18,700

⁹ See the Supplement dated November 14, 2016 at pages 8-14.

1 contributions, which suggests an intentional instruction to reimburse these contributions, rather
2 than inadvertent mistakes.¹⁰ According to the Submission, the notations were likely written
3 between January 2015 and February 2016. During that same period, Mangum made
4 contributions totaling \$6,400 that were not reimbursed. Without further information, it is
5 impossible to deduce why Bell Nursery did not reimburse those contributions, but reimbursed the
6 contributions at issue in this matter.

7 **B. Analysis**

8 The Federal Election Campaign Act, 52 U.S.C. §§ 30101-46 (the "Act"), prohibits a
9 person from making a contribution in the name of another or knowingly permitting his or her
10 name to be used to effect such a contribution.¹¹ The term "person" for purposes of the Act and
11 Commission's regulations includes partnerships.¹² The Commission has included in its
12 regulations illustrations of activities that constitute making a contribution in the name of another:

- 13 (i) Giving money or anything of value, all or part of which was provided
14 to the contributor by another person (the true contributor) without
15 disclosing the source of money or the thing of value to the recipient
16 candidate or committee at the time the contribution is made; or
17 (ii) Making a contribution of money or anything of value and attributing
18 as the source of the money or thing of value another person when in
19 fact the contributor is the source.¹³

¹⁰ For example, the entry for the contribution to Georgians for Isakson reads: "All*GEORGIANs FOR ISWASHINGTON DC." A handwritten note by that entry makes the following clarification with a check mark by it: "Johnny Isakson Georgia (Frank Blake Dinner) political donation."

¹¹ 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b)(1)(i).

¹² See 52 U.S.C. § 30101(11); 11 C.F.R. § 100.10. As a disregarded entity whose parent company is an LLC that is treated as a partnership by the Internal Revenue Service, Bell Nursery is treated as a partnership for the purpose of making contributions. See 11 C.F.R. § 110.1(g)(2).

¹³ 11 C.F.R. § 110.4(b)(2)(i)-(ii).

1 By reimbursing Mangum for his federal contributions, Bell Nursery made contributions
2 in the name of another. Further, Mangum allowed his name to be used to make contributions in
3 the name of another.

4 A violation of the Act is knowing and willful if the "acts were committed with full
5 knowledge of all the relevant facts and a recognition that the action is prohibited by law."¹⁴ This
6 does not require proving knowledge of the specific statute or regulations that the respondent
7 allegedly violated.¹⁵ Instead, it is sufficient that the respondent "acted voluntarily and was aware
8 that his conduct was unlawful."¹⁶ This may be shown by circumstantial evidence from which the
9 respondents' unlawful intent reasonably may be inferred.¹⁷

10 While the evidence indicates that Bell Nursery knowingly sought to reimburse Mangum
11 for certain contributions in violation of the law, the record, as a whole, does not suggest that
12 these violations were knowing and willful. First, the respondents deny they intended to violate
13 federal laws, explaining that the reimbursements were caused by "insufficient attention to
14 distinguishing between Mr. Mangum's business and personal civic activities."¹⁸ Second, during
15 the period when contributions were reimbursed, other federal contributions were not reimbursed,

¹⁴ 122 Cong. Rec. 12,197, 12,199 (May 3, 1976).

¹⁵ *United States v. Danielczyk*, 917 F.Supp. 2d 573, 579 (E.D. Va. Jan. 9, 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish a violation is willful, government needs to show only that defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)).

¹⁶ *Id.*

¹⁷ *Cf. United States v. Hopkins*, 916 F.2d 207, 213 (5th Cir. 1990) (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir. 1989)). *Hopkins* involved a conduit contribution scheme, and the issue before the Fifth Circuit concerned the sufficiency of the evidence supporting the defendants' convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

¹⁸ Respondents note that Maryland allows both individuals and corporations to make contributions and seem to imply that the difference between federal and Maryland law may have contributed to their lack of diligence. Maryland, however, does not allow contributions to be reimbursed by another party. Md. Election Law Code Ann. § 13-602(a)(5).

1 which supports Respondents' claim that the reimbursements occurred because of negligence.
2 Third, there is no evidence that Respondents tried to conceal the reimbursements by making false
3 entries regarding the purpose of the payments. Fourth, Respondents appear to have retained
4 counsel voluntarily to review its compliance with both state and federal law, and they
5 implemented appropriate remedial measures. Although Mangum had experience making federal
6 contributions, which provides some basis to infer he knew that it was improper to seek
7 reimbursements, the overall circumstances make it reasonable to conclude the reimbursements
8 resulted from a mistake.¹⁹

9 Accordingly, the Commission finds reason to believe that Bell Nursery USA, LLC
10 violated 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b)(1)(i); and that Gary L. Mangum violated
11 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b)(1)(ii), (iii).

¹⁹ See, e.g., MUR 5643 (Carter's) (*sua sponte* involving company reimbursing contributions required to get tickets to President's speech at candidate's fundraiser. Checks were made out to the candidate's principal campaign committee, and corporation had a policy in place of not reimbursing political contributions. Nevertheless, the Commission accepted Respondents' statements that they did not know their conduct was illegal.).